



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 6, 2004

Mr. Kuruvilla Oommen
Assistant City Attorney
City of Houston - Legal Department
P.O. Box 1562
Houston, Texas 77251-1562

OR2004-3727

Dear Mr. Oommen:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 200996.

The City of Houston (the "city") received a request for information pertaining to an investigation by the Office of the Inspector General ("OIG") involving a named city employee, and information relating to disciplinary action against the employee for violations of city policy. You claim that the requested information is excepted from disclosure under sections 552.101, 552.108, 552.117, 552.130, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. You inform us that the OIG was established by Executive Order of the Mayor in February 1988 as a central authority to investigate allegations of city employee misconduct, both criminal and administrative. You state that the information submitted as Exhibit 2 relates to a criminal investigation that "concluded in a determination that the evidence was not sufficient to support the criminal allegations." Thus, you indicate that Exhibit 2 relates to a criminal investigation by the criminal investigations unit of the OIG that did not result in conviction or deferred adjudication. Based upon your representations and our review of the submitted information, we agree that section 552.108(a)(2) is applicable to Exhibit 2. Thus, with the exception of the basic information, the city may withhold the information in Exhibit 2 pursuant to section 552.108(a)(2) of the Government Code.¹ Basic information is not excepted from

¹ Based on this finding, we do not reach your other claimed exceptions to disclosure.

disclosure under section 552.108 and must be released. See Gov't Code § 552.108(c); *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), writ ref'd n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information).²

We note, however, that the submitted documents indicate that this matter was referred to the administrative investigations unit of the OIG. Section 552.108 generally is not applicable to an administrative investigation that did not result in a criminal investigation or prosecution. See *City of Fort Worth v. Cornyn*, 86 S.W.3d 320, (Tex. App. 2002, no pet. h.); Open Records Decision No. 562 at 10 (1990); *Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. App.—El Paso 1992, writ denied) (statutory predecessor not applicable to internal investigation that did not result in criminal investigation or prosecution); Open Records Decision No. 350 at 3-4 (1982). Thus, while the city may generally withhold information pertaining to the investigation conducted by the criminal investigations unit of the OIG pursuant to section 552.108(a)(2) of the Government Code, we conclude that information pertaining to an investigation conducted by the administrative investigations unit of the OIG is not excepted under section 552.108 and may not be withheld on that basis.

In summary, with the exception of basic information, the department may withhold the information at issue pursuant to section 552.108(a)(2) of the Government Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public

² We note the city has the discretion to release all or part of the remaining information that is not otherwise confidential by law. Gov't Code § 552.007.

records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



David R. Saldivar
Assistant Attorney General
Open Records Division

DRS/seg

Ref: ID# 200996

Enc: Submitted documents

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(w/o enclosures)